

Internal Revenue Service

memorandum

TL-N-2896-01

date: 07 MAY 2001

to: Internal Revenue Service, Examination Division

from: Alice M. Harbutte, Attorney
LMSB Area 4, Natural Resources, Denver, Colorado

subject:

Statute Extensions, Forms 872
Form 1120: FYE [REDACTED] (Short Year return)

This memorandum is in response to your request for advice dated May 1, 2001, concerning the proper party to execute statute extension, Form 872, with respect to the 1998 U.S. Consolidated Return, Form 1120, filed by [REDACTED] for its short year ending [REDACTED].

FACTS

[REDACTED], was a common parent filing a consolidated return for the short period ended [REDACTED], with its seven subsidiaries: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

On [REDACTED], [REDACTED] and [REDACTED] subsidiaries were acquired by [REDACTED], a wholly owned subsidiary of [REDACTED]. [REDACTED] was merged with and into [REDACTED]. The separate existence of [REDACTED] ceased and [REDACTED], continued as the surviving corporation and became a wholly owned subsidiary of [REDACTED]. The taxpayer intended the merger to be treated as a reorganization pursuant to the provisions of I.R.C. § 368(a)(1). Shares of [REDACTED] and [REDACTED] were canceled and shares of [REDACTED] were issued in their place. Through a series of name changes [REDACTED] changed its name to [REDACTED], on [REDACTED].

DISCUSSION

I.R.C. § 6501(a) sets out the general rule that taxes must be "assessed within 3 years after the return was filed * * *." However, the parties may consent to extend the statute of limitations pursuant to section 6501(c)(4). Absent a valid section 6501(c)(4) agreement, the statute of limitations, is not extended and the audit must be completed within 3 years from the date the return was filed. A return filed before the due date is considered filed on the date it is due. Section 6501 (b)(1). A Form 872, Consent to Extend the Time to Assess Tax, is the form used by the Service to extend the period for assessment to the specific date specified on the form.

The common parent of a consolidated group is the sole agent for each subsidiary in the group. Treas. Reg. @ 1.1502-77(a). Thus, generally, the common parent is the proper party to receive a statutory notice of deficiency, for all members in the group. Treas. Reg. @ 1.1502-77(a). Generally, the common parent for a particular consolidated return year remains the common parent agent for purposes of extending the period of limitations with respect to that year even though that corporation is no longer the common parent of that group when some action, such as executing an extension, needs to be taken for that year.

CONCLUSION

The consent to extend the statute of limitations, Form 872, for the taxable year ending [REDACTED], relating to the consolidated return for which [REDACTED] was the common parent of the group, may be executed by a duly authorized officer of [REDACTED], now called [REDACTED]. This consent may also be executed by a duly authorized officer of [REDACTED], as the alternative agent of the former [REDACTED], group. We recommend, however, obtaining a signature from a duly authorized officer of [REDACTED], now known as [REDACTED], as this entity is still in existence. See Treas. Reg. § 1.1502-77T(a)(4)(i). If a duly authorized officer of [REDACTED] ([REDACTED]) is used, we recommend that the name of the taxpayer in the Form 872 be identified and the signature line read as follows:

[REDACTED] (EIN: of [REDACTED]) formerly known as
[REDACTED] (EIN: of [REDACTED]) and
[REDACTED]*

Put an asterisk after "Group." At the bottom of the Form 872, type:

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*This is with respect to the [REDACTED]
[REDACTED] consolidated group for the taxable
year ending [REDACTED].

If a duly authorized officer of [REDACTED]
[REDACTED] is used, we recommend that the name of the taxpayer in the
Form 872 be identified and the signature line read as follows:

[REDACTED] (EIN: of [REDACTED]), as
agent for [REDACTED] (EIN: of [REDACTED]) formerly known
as [REDACTED]
[REDACTED].*

Put an asterisk after "Group." At the bottom of the Form 872,
type:

*This is with respect to the [REDACTED]
[REDACTED] consolidated group for the taxable
year ending [REDACTED].

If you have any questions concerning this matter, please
call Attorney Alice M. Harbutte at (303) 844-3258.



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